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265 NLRB No. 73

D--9513
Albany, NY

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SEMCO PRINTING CENTER, INC.

and

Case 3--CA--11063

GRAPHIC ARTS INTERNATIONAL
UNION, LOCAL 10--B, AFL--CIO

DECISION AND ORDER

Upon a charge filed on June 7, 1982, by Graphic Arts International Union, Local 10--B, AFL--CIO, herein called the Union, and duly served on Semco Printing Center, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 3, issued a complaint and notice of hearing on June 21, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on May 6, 1982, following a Board

election in Case 3--RC--8056, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about May 25, 1982,[2] and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so, and commencing on or about May 25, 1982, Respondent has refused and continues to date to refuse to bargain collectively with the Union by refusing to provide information requested by the Union. On July 2, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On August 5, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on August 13, 1982, the Board issued an order transferring the proceeding to the Board and a

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[1] Official notice is taken of the record in the representation proceeding, Case 3--RC--8056, as the term ''record'' is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] The complaint alleges that since on or about May 25, 1982, Respondent has failed and refused to bargain with the Union and to furnish it with certain requested information. In its answer, Respondent admits its refusal to bargain but states that such refusal dates from June 1, 1982. In the Motion for Summary Judgment, the General Counsel concedes that Respondent's refusal to bargain occurred on June 1, 1982. The General Counsel further contends, and we agree in light of Respondent's admissions, that this variance is clearly de minimis in nature and raises no material questions of fact.

Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits the request and its refusal to recognize and bargain with the Union. However, it challenges the Union's certification based on its objections to the election in the underlying representation proceeding.

Review of the record herein, including the record in Case 3--RC--8056, reveals that an election conducted pursuant to a Stipulation for Certification Upon Consent Election on May 7, 1981, resulted in a vote of eight for, and five against, the Union, with no challenged ballots. Thereafter Respondent filed timely objections to the election alleging, in substance, that the Union (1) promised certain, but not all, employees that it would waive their initiation fees; (2) promised to waive initiation fees for employees who joined prior to the election; (3) represented to employees that signing an authorization card was only to get an opportunity to vote; (4) represented to employees that signing an authorization card was protection

against discharge by the Employer; (5) represented to employees that, if an employee did not sign an authorization card, the Union could not stand by him if discharged; (6) represented to employees that if the Union won the election it would discriminate against employees who had not shown support for it prior to the election by not representing them as vigorously as it would represent employees who had shown support; (7) misrepresented wages and benefits it claimed to have negotiated at other shops; (8) represented to employees that another employer had reduced wages of its employees after the Union had lost the election in order to recoup its campaign costs; (9) suggested to employees that Semco would lower its wages to recoup campaign costs if the Union lost the election and that the employees would be unprotected against such action; (10) misrepresented to employees that Semco's parent company was already unionized at other locations; (11) misrepresented to employees that the Employer was already negotiating union contracts at other branches; (12) coerced employees by trespassing on the Employer's premises and taking pictures of employees while soliciting authorization cards from them; and (13) promised employees that it would waive provisions in its constitution and bylaws which restricted the ratio of apprentices to journeymen in the shop.

After investigation, the Regional Director issued his Report on Objections in which he recommended that Respondent's objections be overruled in their entirety and that a certification of representative be issued. Thereafter, Respondent

filed exceptions to the Regional Director's report. On September 30, 1981,[3] the Board, having considered the Regional Director's report, the Employer's exceptions thereto, and the entire record, adopted the findings and recommendations of the Regional Director with respect to Objections 3--13. However, the Board found that Objections 1 and 2 raised substantial and material issues of fact and remanded them for hearing before a hearing officer. Thereafter, the Hearing Officer issued a report in which he recommended that the objections be overruled and a certification of representative be issued. Respondent filed timely exceptions to the Hearing Officer's report. On May 6, 1982, the Board adopted the Hearing Officer's findings and recommendations and certified the Union as the exclusive bargaining agent of the employees in the unit stipulated to be appropriate. It thus appears that Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the representation proceeding.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[4]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding,

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[3] Not reported in volumes of Board Decisions.

[4] See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

In this proceeding, Respondent contends, in effect, that it is entitled to a hearing on Objections 3--13. Prior to adopting the findings and recommendations of the Regional Director's report with respect to Objections 3--13, the Board considered the report, Respondent's exceptions thereto, and the entire record in this case. By its adoption of that portion of the report recommending that Objections 3--13 be overruled, the Board necessarily found that these objections raised no substantial or material issues warranting a hearing.[5] Further, it is well established that the parties do not have an absolute right to a hearing on objections to an election. It is only when the moving party presents a prima facie showing of substantial and material issues which would warrant setting aside the election that it is entitled to an evidentiary hearing. It is clear, absent arbitrary action, this qualified right to a hearing satisfies the

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[5] Madisonville Concrete Co., A Division of Corum & Edwards, Inc., 220 NLRB 668 (1975), enforcement denied 552 F.2d 168 (6th Cir. 1977); Evansville Auto Parts, Inc., 217 NLRB 660 (1975).

constitutional requirements of due process.[6] Accordingly, we find that Respondent at all material times herein has refused to recognize and bargain with the Union, and that it thereby has violated Section 8(a)(5) and (1) of the Act.

In its answer to the complaint, Respondent admits that it has refused to furnish the Union with the requested information, but defends its refusal to furnish such information on the grounds that the Union's certification is improper. For the above-stated reasons, we find such a defense without merit. By letter dated May 25, 1982, the Union requested that Respondent furnish information concerning the employees' rates of pay, benefits, seniority dates, work rules, and related information.[7]

It is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished upon request.[8] Furthermore, Respondent has not attempted to rebut the relevance of the information requested by the Union. Accordingly, we find that no material issues of fact exist with regard to Respondent's refusal to furnish the

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[6] GTE Lenkurt, Incorporated, 218 NLRB 929 (1975); Heavenly Valley Ski Area, a California Corporation, and Heavenly Valley, a Partnership, 215 NLRB 734 (1974); Amalgamated Clothing Workers of America [Winfield Manufacturing Company, Inc.] v. N.L.R.B., 424 F.2d 818, 828 (D.C. Cir. 1970).

[7] More specifically, the Union requested the name, address, rate of pay, classification, and date of hire of each unit employee and a list of Respondent's benefits, including holidays, vacations, health and welfare benefits (cost for each employee), trust indentures and names of trustees, profit sharing, sick leave policy (how many days), jury duty policy, summer picnic, Christmas party, Christmas, bonus, uniforms, and any and all other employee benefits.

[8] Verona Dyestuff Division Mobay Chemical Corporation, 233 NLRB 109, 110 (1977).

information sought by the Union in its letter of May 25, 1982, and that its refusal to do so violated Section 8(a)(5) and (1) of the Act. Therefore, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is, and has been at all times material herein, a New York corporation, with its principal office and a place of business located at 42 Old Karner Road, Albany, New York, where it is engaged in the business of quick printing. During the 12 months prior to issuance of the complaint, a representative period, Respondent, in the course and conduct of its operations at the Albany facility, provided services valued in excess of $50,000 for other enterprises within the State of New York which are directly engaged in interstate commerce. We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Graphic Arts International Union, Local 10--B, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed at the Employer's 42 Old Karner Road, Albany, New York facility; excluding all other employees, office clerical employees, salesmen, casual employees, professional employees, guards and supervisors as defined in the Act, as amended.

2. The certification

On May 7, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 3, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on May 6, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about May 25, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about June 1, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to

refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since June 1, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

C. The Request for Information and Respondent's Refusal To Furnish It

Commencing on or about May 25, 1982, and at all times thereafter, the Union has requested Respondent to provide it with information concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information. Commencing on or about June 1, 1982, Respondent has refused, and continues to refuse, to provide the Union with the requested information.

Accordingly, we find that Respondent has refused to furnish the Union with information relating to employment conditions and wages of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order that Respondent, upon request, furnish the Union with the information it requested by letter dated May 25, 1982.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328

F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Semco Printing Center, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Graphic Arts International Union, Local 10--B, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees employed at the Employer's 42 Old Karner Road, Albany, New York facility; excluding all other employees, office clerical employees, salesmen, casual employees, professional employees, guards and supervisors as defined in the Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since May 6, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about June 1, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all

the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about June 1, 1982, and at all times thereafter, to furnish the Union with information concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information as requested by the Union in its letter of May 25, 1982, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusals to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Semco Printing Center, Inc., Albany, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment

with Graphic Arts International Union, Local 10--B, AFL--CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees employed at the Employer's 42 Old Karner Road, Albany, New York facility; excluding all other employees, office clerical employees, salesmen, casual employees, professional employees, guards and supervisors as defined in the Act, as amended.

(b) Refusing to bargain collectively with the above-named labor organization by refusing to furnish said labor organization with the information requested in its letter of May 25, 1982, concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, furnish the above-named labor organization with the information requested in its letter of May 25, 1982, concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information.

(c) Post at its Albany, New York, facility copies of the attached notice marked ''Appendix.''[9] Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicious places, including all places, where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. December 2, 1982

John H. Fanning, Member

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Graphic Arts International Union, Local 10--B, AFL--CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to bargain collectively with the above-named Union by refusing to furnish said Union the information it requested in its letter of May 25, 1982, concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time and regular part-time production and maintenance employees employed by us at our 42 Old Karner Road, Albany, New York facility; excluding all other employees, office clerical employees, salesmen, casual employees, professional employees, guards and supervisors as defined in the Act, as amended.

WE WILL, upon request, bargain collectively with the above-named Union by furnishing it the information it requested concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information.

SEMCO PRINTING CENTER, INC.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 901, 111 West Huron Street, Buffalo, New York 14202, Telephone 716--846--4951.